

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TYLER JAMISON,

Petitioner,

vs.

MARGARET GILBERT,

Respondent.

No. 2:16-CV-00079-JLQ

MEMORANDUM OPINION AND
ORDER DENYING PETITION FOR
HABEAS CORPUS

BEFORE THE COURT is Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (ECF No. 11), Respondent's Answer (ECF No. 17), and Petitioner's Reply (ECF No. 20). Pursuant to Rule 8(a) of the Rules Governing Section 2254 Cases, this court has reviewed the record and determined no evidentiary hearing is warranted.

I. Introduction and Factual Background

Petitioner was convicted, after a jury trial, of two counts of Assault of a Child in the First Degree on July 20, 2012. On October 1, 2012, Petitioner was sentenced to a total term of 360 months, composed of 180 months on each count to be served consecutively. (ECF No. 19¹, Ex. 1). The abuse inflicted on Petitioner's infant daughter is set forth in great detail in the May 20, 2014 unpublished opinion of the Washington Court of Appeals. (*Id.* at Ex. 2). A detailed factual recitation will not be repeated here, but the introductory paragraph of the Washington Court of Appeals' Opinion gives a brief summary of the nature of the offense:

Tyler Jamison choked, smothered, squeezed, and bounced his infant daughter, S.J., on multiple occasions, in an attempt to stop the baby's crying. Jamison fractured his daughter's ribs, bruised much of her body, and caused her severe brain damage. As a result of the horrific acts, S.J. is now blind. A feeding tube sustains her. She is nonresponsive. (*Id.* at Ex. 2 p. 1).

¹Portions of the State Court record are referenced on the docket at ECF No. 19 and available in paper format in Clerk's Office.

1 The instant Petition argues his two convictions were for the same criminal conduct
2 and that such is a violation of the Double Jeopardy provision of the Constitution. He
3 argues his two 180-month sentences were required to be run concurrently, and it was
4 error to run them consecutively. Respondent contends Petitioner's claim is barred by the
5 one-year statute of limitations contained in the Antiterrorism and Effective Death Penalty
6 Act ("AEDPA"). Respondent further argues that if this court does reach the merits,
7 Petitioner is not entitled to relief as the state court adjudication was not an unreasonable
8 application of clearly established federal law.

9 **II. Discussion**

10 **A. Statute of Limitations**

11 Respondent, Margaret Gilbert, Superintendent of Stafford Creek Corrections
12 Center, filed her Answer on July 18, 2016 in which she claims the Petition for Writ of
13 Habeas Corpus is untimely under the so called Antiterrorism and Effective Death Penalty
14 Act ("AEDPA"), 28 U.S.C. § 2244, *et. seq.* Respondent seeks denial of the Petition with
15 prejudice on the basis that it is time-barred.

16 **1. Timeline of Events Relevant to Statute of Limitations**

17 1. **July 20, 2012** - Petitioner is convicted by the jury of two counts of First Degree
18 Assault of a Child.

19 2. **October 1, 2012** - Judgment and Sentence is entered in Washington Superior
20 Court of Spokane County.

21 3. Petitioner timely appealed to the Washington Court of Appeals. Petitioner was
22 represented by counsel on appeal.

23 4. **May 20, 2014** - the Washington Court of Appeals affirmed in an unpublished
24 opinion.

25 5. **July 16, 2014** - Petitioner filed a pro se Petition for Review with the
26 Washington Supreme Court.

27 6. **November 5, 2014** - Washington Supreme Court issued an Order denying the
28 Petition for Review.

1 se violation of the Suspension Clause."). The one-year limitation does not render the writ
2 of habeas corpus inadequate or ineffective as it allows a petitioner a reasonable
3 opportunity to have his claims heard on the merits. *Id.* at 1004. Further, the limitations
4 period is not jurisdictional and is subject to equitable tolling. *Id.* at 1003-1004. Petitioner
5 has advanced no argument for equitable tolling.

6 In his Reply brief (ECF No. 20), Petitioner cites to RCW 10.73.100 and argues the
7 1-year statute of limitations does not apply because he is asserting a Double Jeopardy
8 claim. The statute he cites in support of his argument is a Washington state statute,
9 which reads in part: "The time limit specified in RCW 10.73.090 does not apply to a
10 petition or motion that is based solely on one or more of the following grounds ... (3) The
11 conviction was barred by double jeopardy under Amendment V of the United States
12 Constitution...". RCW § 10.73.100. This statute, by its plain terms, applies to RCW
13 10.73.090, which sets a one-year time limit for petitions or motions for collateral attack
14 which are filed in state court. The state statute does not extend the federal one-year
15 statute of limitations contained in the AEDPA. See *Ferguson v. Palmateer*, 321 F.3d 820,
16 823 (9th Cir. 2003)("It is unreasonable for a federal habeas petitioner to rely on a state
17 statute of limitations rather than the AEDPA's statute of limitations.").

18 On the record before the court, Respondent's argument is well taken. Petitioner did
19 not file a petition for writ of certiorari to the United States Supreme Court, nor did he file
20 a petition for post-conviction relief in state court. Accordingly, the AEDPA one-year
21 period of limitation began to run on February 3, 2015. The filing of his Petition in this
22 court, on March 22, 2016, was untimely.

23 **B. The Merits**

24 As Petitioner's filing was untimely, this court need not address the merits.
25 However, Respondent has presented argument on the merits, and the court will briefly
26 address the claims. Petitioner raises two arguments: 1) Double Jeopardy - - Petitioner
27 contends he was charged and convicted of two counts of Assault of a Child in the First
28 Degree; and 2) Same Criminal Conduct - Petitioner claims he can show the two

1 convictions were for the same criminal conduct which requires concurrent sentences.
2 (ECF No. 11, p. 5-7). Both of these issues were raised on direct appeal and addressed by
3 the Washington Court of Appeals. The Court of Appeals stated: "Jamison's two
4 convictions do not offend the double jeopardy prohibition because he committed more
5 than one offense, act, or transaction." (ECF No. 19, Ex. 2 at p. 13). The Court of Appeals
6 additionally found "each count required proof of a legal element, which the other does
7 not." (*Id.*). Specifically, the court stated: "Count two uniquely required the jury find that
8 the defendant had previously engaged in a pattern or practice of assaulting S.J., which
9 resulted in bodily harm that was greater than transient physical pain or minor temporary
10 marks." (*Id.*).

11 Petitioner has not established the Washington Court of Appeals decision is
12 "contrary to, or involved an unreasonable application of, clearly established Federal law,
13 as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d); *Visciotti*
14 *v. Martel*, 839 F.3d 845 (9th Cir. 2016). The Washington Court of Appeals found the
15 counts required different legal elements, and found the facts supported a finding he had
16 committed more than one offense. The court stated: "He committed multiple attacks or
17 intrusions on the safety of his daughter." (ECF No. 19, Ex. 2 at p. 13). Petitioner has not
18 established this is an "unreasonable determination of the facts in light of the evidence
19 presented in the State court proceeding." 28 U.S.C. 2254(d).

20 Concerning the same criminal conduct argument, Jamison states: "I can meet the
21 requirements to show same criminal conduct which would require concurrent sentences."
22 (ECF No. 11, p. 7). However, even if Jamison could now, on federal habeas review,
23 "meet the requirements to show same criminal conduct," that was his burden before the
24 trial court. The Washington Supreme Court in *State v. Graciano*, 176 Wash.2d 531
25 (2013), held a defendant bears the burden of production and persuasion on same criminal
26 conduct claims. The Washington Supreme Court stated a same criminal conduct finding
27 favors the defendant by lowering his offender score, and "because this finding favors the
28 defendant, it is the defendant who must establish the crimes constitute the same criminal

conduct." *Id.* at 539. The Washington Supreme Court further stated "same criminal conduct does not have a constitutional dimension" and the legislature could allocate the burden of proof. *Id.* at 539-540. "Two crimes manifest the same criminal conduct only if they require the same criminal intent, are committed at the same time and place, and involve the same victim." *Id.* at 540. In evaluating whether Jamison's convictions constituted "same criminal conduct," the Washington Court of Appeals stated: "Tyler Jamison intentionally assaulted S.J. repeatedly over the course of several weeks." (ECF No. 19, Ex. 2 at p. 18). The Washington Court of Appeals observed that although both counts of conviction encompassed Jamison's conduct on April 5th, "count two encompasses more than just the morning of the 5th. Count two includes when Jamison bounced S.J. on the couch previously, when Jamison fractured S.J.'s ribs about two weeks prior, and when Jamison first choked S.J. prior to her March 17 emergency room visit." (*Id.* at 19). Petitioner has not established this is an "unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. 2254(d).

III. Conclusion

Defendant's Petition was not filed within one-year of the date on which his judgment became final and is time-barred. 28 U.S.C. § 2244(d)(1). In reviewing the merits, *ex gratia*, the court finds Petitioner has not made a showing his sentence was the result of unreasonable application of clearly established federal law, or involved an unreasonable determination of facts. 28 U.S.C. § 2254(d)(1)&(2).

IT IS HEREBY ORDERED:

1. Petitioner's Petition for Writ of Habeas Corpus (ECF No. 11) is untimely under the one-year AEDPA statute of limitations and Petitioner has presented no valid reason for the tolling of the statute.

2. Petitioner's Petition for Writ of Habeas Corpus (ECF No. 11) is **DENIED**. The Petition and the claims therein are **dismissed with prejudice**.

3. Pursuant to Rule 11 of the Rules Governing Section 2254 Proceedings, this court "must issue or deny a certificate of appealability when it enters a final order adverse

1 to the applicant." A certificate of appealability may issue only if the applicant has made a
2 substantial showing of the denial of a constitutional right, and the certificate must
3 indicate which specific issue or issues satisfy the showing. *Slack v. McDaniel*, 529 U.S.
4 473, 483 (2000). A "substantial showing" includes demonstrating reasonable jurists
5 could debate whether the petition should have been resolved in a different manner or the
6 issues presented were adequate to deserve encouragement to proceed further. *Id.* at 483-
7 84. Petitioner has not made such showing and the court **DENIES** a certificate of
8 appealability.

9 **IT IS SO ORDERED.** The Clerk is hereby directed to file this Order, **enter**
10 **Judgment in favor of Respondent**, furnish copies to counsel and Mr. Jamison, and close
11 the file.

12 DATED this 2nd day of December, 2016.

13 s/ Justin L. Quackenbush
14 JUSTIN L. QUACKENBUSH
15 SENIOR UNITED STATES DISTRICT JUDGE
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